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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,164	11/30/2001	Richard Gore	CSCO-111868	4274

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EXAMINER

DIVECHA, KAMAL B

ART UNIT	PAPER NUMBER
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2151

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/007,164

Applicant(s)

GORE ET AL.

Examiner

KAMAL B. DIVECHA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Claims 1-26 are pending in this application.

Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection, as necessitated by the substantial amendments (See response filed December 18, 2006).

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites:

A method for monitoring electronic commerce transactions, said method comprising the computer-implemented steps of:
determining network transport latency between a network monitor and a customer site;
determining application test latency, comprising transmitting an application test to said customer site, wherein said application test is selected to represent a portion of said electronic commerce transactions, and an application monitor determines a time interval between said transmitting and receiving a response; and
indicating said network transport latency and said application test latency on a display.

In the context of this claim, the term "customer site" is unclear. It is unclear whether the term corresponds to a website, customer location, and/or a server.

Secondly, the location of the network monitor is unclear. It is unclear whether the network monitor is located within the customer site (can be within a LAN) or is located in a

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remote area. It is also unclear whether the network monitor is a software system or a hardware system.

Similar deficiencies apply to an “application monitor”. That is, it is unclear where the monitor is located and further it is unclear if the application monitor is software based or hardware based because if the monitor is a software based, it is possible that the monitors are located within a customer site.

Furthermore, in the context of the claim, the functionality of “transmitting an application test to said customer site” is unclear. It is unclear which one of the following: a network monitor, an application monitor or other entity of the system, is transmitting the application test to a customer site.

The claim recites the limitation “said transmitting”. There is insufficient antecedent basis for this limitation in the claim.

Claims 2-26 are rejected for the same reasons as set forth in claim 1.

Furthermore, as indicated in the previous office action:

Claim 4 recites:

A method for monitoring electronic commerce transactions as recited in claim 2 wherein said method further includes:

- calculating a network transport latency unloaded baseline, said network transport latency unloaded baseline indicating the lowest calculated network transport latency during a given time period; and
- displaying said network transport latency unloaded baseline.

The phrase “unloaded” and/or “unloaded baseline” renders the claim indefinite because the phrase fails to convey clearly the intended teaching or function associated with the phrase “unloaded baseline”.

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For examination purposes, the limitation will be interpreted as calculating and displaying network transport latency.

Applicant is advised to take an appropriate action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1, 2, 4-14, 16-21 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boker (US 2003/0074606 A1) in view of Rakoshitz et al. (hereinafter Rakoshitz, US 6,578,077 B1).

As per claim 1, Boker discloses a method for monitoring electronic commerce transactions (fig. 1 and pg. 1 [0008-0012], Abstract), said method comprising the computer-implemented steps of:

determining network transport latency between a network monitor and a customer site (fig. 1: indicates a network comprising network monitor and customer sites, fig. 5A and pg. 8 [0152]);

determining application test latency, comprising transmitting an application test to said customer site (pg. 3 [0087], pg. 4 [0089]: load generator that sends URL requests in form of tests or other messages to target system and monitors responses), wherein said application test is selected to represent a portion of said e-commerce transactions (pg. 1 [0003], pg. 3 [0083], pg. 1 [0011], and fig. 7: shows the various components of a e-commerce web site such as checkout component which is equivalent to order component, pg. 6 [0116]), and an application monitor determines a time interval between said transmitting and receiving a response (fig. 7: shows the response times of various components of a web site, pg. 1 [0003-0005], pg. 8 [0156], pg. 9 [0158]); and

indicating said application test latency on a display (fig. 7 and pg. 8 [0156]).

However, Bower does not disclose a process of indicating the network transport latency on a display.

Rakoshitz, from the same field of endeavor explicitly discloses the process of determining and indicating the transport latency on a display (fig. 9-13, col. 5 L1-13, col. 6 L30 to col. 7 L37, col. 17 L64 to col. 18 L46, col. 20 L15-65).

Therefore it would have been obvious to a person of ordinary skilled in the art at the time of the invention to modify Bower in view of Rakoshitz in order to display the monitored transport delay.

One ordinary skill in the art would have been motivated because it would have indicated round trip time or delay associated with a request, and/or bandwidth consumption to a network administrator for performance monitoring and/or evaluation (Rakoshitz, col. 17 L64 to col. 18 L45, col. 20 L15-41; Bower, pg. 1 [0003]).

As per claim 2, Bower discloses the process of determining an application test latency baseline that indicates an average of previously determined values of application test latency for a given day and time (fig. 7: shows the maximum, average, minimum and last value for various components, pg. 5 [0100]).

However, Bower does not disclose the process of determining a network transport latency baseline that indicates an average of previously determined values of network transport latency for a given day and time.

Rakoshtiz, from the same field of endeavor discloses the process of determining a network transport latency baseline that indicates an average of previously determined values of network transport latency for a given day and time (col. 16 L36 to col. 17 L60, col. 17 L65 to col. 18 L50, col. 20 L15-41, fig. 13: clearly indicates the minimum, maximum and average on a display).

Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Bower in view of Rakoshitz in order to determine a network transport latency baseline indicating an average of previously determined values.

One of ordinary skilled in the art would have been motivated for the same reasons a set forth in claim 1.

As per claim 4, Bower does not disclose the process of calculating a network transport latency unloaded baseline, said network transport latency unloaded baseline indicating the lowest calculated network transport latency during a given time period; and displaying said network transport latency.

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Rakoshitz, from the same field of endeavor discloses the process of calculating a network transport latency unloaded baseline, said network transport latency unloaded baseline indicating the lowest calculated network transport latency during a given time period; and displaying said network transport latency (col. 16 L36 to col. 17 L60, col. 17 L65 to col. 18 L50, col. 20 L15-41, fig. 13: clearly indicates the minimum, maximum and average on a display).

Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Bower in view of Rakoshitz in order to calculate and display the network latencies.

One of ordinary skilled in the art would have been motivated because of the reasons as set forth in claim 1.

As per claim 5, Bower does not disclose the process wherein a single graph is displayed that indicates network transport latency, network transport latency baseline and network transport latency unloaded baseline.

Rakoshitz, from the same field of endeavor explicitly discloses the network transport latencies including baseline and unloaded baseline in a single graph (fig. 13 and col. 16 L36 to col. 20 L41: shows various components of the performance metrics).

Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Bower in view of Rakoshitz in order to display the latencies in a single graph.

One of ordinary skilled in the art would have been motivated because of the reasons as set forth in claim 1.

As per claim 6, Bower discloses the process of calculating an application test latency unloaded baseline, said application test latency unloaded baseline indicating the lowest calculated application test latency during a given time period and displaying said application test latency, said application test latency baseline and said application test latency unloaded baseline on the same graph (fig. 7: shows the maximum, average, minimum and last value for various components).

As per claim 7, Bower discloses the process wherein a single graph is displayed that indicates said application test latency, application test latency baseline and application test latency unloaded baseline (fig. 7: shows the maximum, average, minimum and last value for various components).

As per claims 8, Bower discloses the process wherein application component latency is determined for each of a plurality of application components and wherein said application component latency for each of said plurality of application components can be displayed (fig. 7: shows the maximum, average, minimum and last value for various components).

As per claims 9, Bower discloses the process wherein an application component latency baseline is determined for each application component and wherein said application component latency baseline can be displayed (fig. 7: shows the maximum, average, minimum and last value for various components).

As per claim 10, Bower discloses the process wherein an application component latency unloaded baseline is determined for each of said plurality of application components and wherein said application component latency unloaded baseline for each of said plurality of application

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components can be displayed (fig. 7: shows the maximum, average, minimum and last value for various components).

As per claim 11, Bower discloses the process wherein a graph can be generated for each application component that includes said application component latency, said application component latency baseline and said application component latency unloaded baseline (fig. 7: shows the maximum, average, minimum and last value for various components).

As per claim 12, Bower discloses the process wherein said application components include an order component, a login component, a configure component and a help component (fig. 7: shows scripts for various components and the measurements, pg. 6 [0116] and pg. 1 [0011]).

As per claims 13, 14, 16-21, 23-26, they do not teach or further define over the limitations in claims 1, 2 and 4-12. Therefore, claims 13, 14, 16-21, 23-26 are rejected for the same reasons as set forth in claims 1, 2 and 4-12.

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3. Claims 3, 15, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boker (US 2003/0074606 A1) in view of Rakoshitz et al. (hereinafter Rakoshitz, US 6,578,077 B1), and further in view of "Official Notice".

As per claim 3, Bower in view of Rakoshitz discloses a method for monitoring electronic commerce transactions further comprises:

determined network transport latency from previously determined values of network transport latency for a given day and time (Rakoshitz, fig. 9-13, col. 5 L1-13, col. 6 L30 to col. 7 L37, col. 17 L64 to col. 18 L46, col. 20 L15-65); determined application test latency from previously determined values of said application test latency for a given day and time (pg. 3 [0087], pg. 4 [0089]) and wherein said step of indicating said network transport latency and said application test latency further includes displaying said network transport latency and displaying of said application test latency (Bower, fig. 7; Rakoshitz, fig. 12-13).

However, Bower in view of Rakoshitz does not disclose the process of determining deviation of network transport latency and application test latency and displaying the deviation.

Office Notice is taken. It would have been obvious to one of ordinary skilled in the art at the time of the invention to calculate deviation of information in order to determine the absolute difference between one number in a set and the mean of the set for the data and display the deviation.

One of ordinary skilled in the art would have been motivated because it would have enabled the administrator to analyze the latencies more efficiently.

As per claims 15 and 22, they do not teach or further define over the limitations in claim 3. Therefore claims 15 and 22 are rejected for the same reasons as set forth in claim 3.

Additional References

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Scarlat, WO 01/53949 A1: Service for load testing a transactional server over the Internet.
- b. Landan, WO 01/16753 A2: Post-Deployment Monitoring of server performance.
- c. Kubo, US 6,986,139 B1: Graph showing standard deviation of response times (fig. 9).
- d. Klassen et al., US 6,711,137 B1: discloses the process of determining the deviation of ping times in order to calculate the apparent jitter (claim 30).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

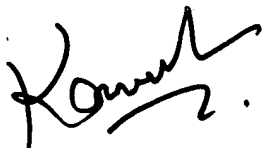
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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

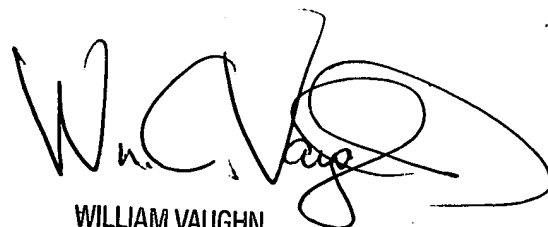
Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is 571-272-5863. The examiner can normally be reached on Increased Flex Work Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kamal Divecha
Art Unit 2151
January 22, 2007.



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